

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 71-027-16-1-5-00387-17
Petitioners: Lyle D. & Rhonda C. Baker¹
Respondent: St. Joseph County Assessor
Parcel: 71-13-32-100-010.000-027
Assessment Year: 2016

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated their 2016 assessment appeal with the St. Joseph County Assessor on August 30, 2016.
2. On March 21, 2017, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioners.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.
4. The Board issued a notice of hearing on November 30, 2017.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on January 17, 2018. She did not inspect the property.
6. Lyle Baker appeared *pro se* and was sworn as a witness. Attorney Frank Agostino appeared for the Respondent. St. Joseph County Assessor Rosemary Mandrici was sworn as a witness.

Facts

7. The property under appeal is a single-family residence located at 66300 Oak Road in Lakeville.
8. The PTABOA determined a total assessment of \$171,300 (land \$71,000 and improvements \$100,300).

¹ Mr. Baker filed the Form 131 petition in his name only. However, both Lyle and Rhonda Baker are listed as owners of the property on the Form 115, Form 134, and the property record cards offered by the Respondent.

9. The Petitioners requested a total assessment of \$124,700 (land \$32,900 and improvements \$91,800).

Record

10. The official record for this matter is made up of the following:

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioners Exhibit 1: Three year one-acre crop-share lease agreement signed by Jerry Leininger and Lyle Baker on February 15, 2015,
- Petitioners Exhibit 2: Application for Classification (State Form 19883) for 11.45 acres to be entered into the Department of Natural Resources (DNR) Forest and Wildlands Program.

- Respondent Exhibit 1: Petition for Review of Assessment (Form 130); Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134); Notification of Final Assessment Determination (Form 115); and the Form 131,
- Respondent Exhibit 2: Subject property record cards for 2015, 2016, 2017, and “current,”
- Respondent Exhibit 3: Twenty-one interior and exterior photographs of the subject property and two aerial maps,
- Respondent Exhibit 4: Field notes from a February 17, 2017, inspection of the subject property,
- Respondent Exhibit 5: Letter from Steven Winicker, District Forester with the DNR, with a management plan for the subject property’s classified forest and wildlands dated January 25, 2017,
- Respondent Exhibit 6: Subject property’s valuation history,
- Respondent Exhibit 7: Screenshot of the Assessor’s notes regarding the subject property dated January 16, 2018,
- Respondent Exhibit 8: Screenshot of the Petitioners’ 2016 “appeal comments” dated January 16, 2018.

- Board Exhibit A: Form 131 with attachments,
- Board Exhibit B: Notice of hearing dated November 30, 2017,
- Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: Notice of Appearance from Frank Agostino.

d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

- a) The subject property is assessed too high. The property's land classification was erroneously changed from agricultural to excess residential. The property was previously classified as agricultural for 31 years. Prior to the Petitioners taking possession of the property, the "back seven acres was all farm." The property is located in a rural area without the benefit of city services like water, sewer systems, sidewalks, and natural gas. *Baker argument.*
- b) On February 15, 2015, the Petitioners entered into a three-year "crop share lease" with tenant Jerry Leininger. The written agreement states the leased area is one acre, but Mr. Baker admitted he "never measured." *Baker testimony; Pet'rs Ex. 1.*
- c) On September 22, 2017, the DNR approved 11.45 acres of the property for entry into the Classified Forest and Wildlands Program. According to the document, Ms. Mandrici acknowledged the DNR's approval on October 17, 2017. *Baker testimony; Pet'rs Ex. 2.*
- d) In addition to the incorrect land classification, the Petitioners also argue a shed located on the property is incorrectly assessed. This shed is situated on "runners" and ultimately is "removable." Another similarly situated shed is located on the property, but is not currently being assessed.² *Baker argument.*

12. Summary of the Respondent's case:

- a) The property is correctly assessed. The current assessment reflects the property's market value-in-use. The decision to change the land classification from agricultural to excess residential was based on a "cyclical review." As of January 1, 2016, the Respondent was unable to find any conclusive evidence of farming, a timber plan, or any other DNR classified program. *Agostino argument; Mandrici testimony; Resp't Ex. 2, 6, 7.*
- b) A field inspection of the property was performed on February 17, 2017. As a result of the inspection, 0.55 acres was changed to tillable based on the existence of "hay fields." Adjustments were also made to the home to accurately reflect recent changes including updating the home to a 98% completion percentage. The Respondent also

² The Petitioners also argued that "patio stones" on the property are currently "taxed as cement" and the Respondent should "take that off the assessment." Ms. Mandrici testified that she had removed "brick paver block" for "16-pay-'17." *Baker argument; Mandrici testimony.*

corrected the square footage, addition of air conditioning, condition of the detached garage and shed, adjusted both sheds' values, and the swimming pool was removed.³ *Mandrici testimony; Resp't Ex. 2, 3, 4, 7.*

- c) Even though the two sheds located on the property are situated on "rollers" rather than on a permanent foundation, the pricing schedule includes pricing for sheds and therefore they are assessable as real property. *Agostino argument; Mandrici testimony; Resp't Ex. 3.*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
14. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. At the hearing, the ALJ preliminarily determined the burden of proof rested with the Petitioners. Upon further review, however, the Board now determines the burden of proof rests with the Respondent. There is no dispute that the assessment increased more than 5% from 2015 to 2016. In fact, the total assessment increased from \$124,700 in 2015 to \$171,300 in 2016.

³ According to the subject property record cards, the field inspection was for the "16/17 appeal." However, none of the changes listed on the field inspection report appear on the 2016 subject property record card.

17. The Respondent argued that the burden should be on the Petitioners because the increase was due to the reclassification of the land and changes that were applied to the improvements. The Respondent went on to argue that based on the land classification change this matter was exempt from the burden shifting provisions pursuant to Ind. Code § 6-1.1-15-17.2(c). True, Ind. Code § 6-1.1-15-17.2(c) specifically excludes the consideration of the burden statute if the assessment is based on a use or a structural improvement that was not considered in the assessment for the prior tax year. Here, while the Respondent changed the classification of the property, neither party offered any evidence that the actual use of the property changed. The Petitioners used the property in 2015 just as they had used it in 2016, and we ultimately find the use of the property remained the same. And Ind. Code § 6-1.1-15-17.1(2) states the county assessor or township assessor making the change in the classification has the burden of proving that the change in the classification is correct in any review. Additionally, the Board is not persuaded that the burden shifting provisions do not apply because the Respondent updated the finished square footage by 252 square feet. Therefore, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 and Ind. Code § 6-1.1-15-17.1 apply and the burden rests with the Respondent.

Analysis

18. The Respondent failed to make a prima facie case that the 2016 assessment was correct.
- a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2016 assessment, the valuation date was January 1, 2016. See Ind. Code § 6-1.1-2-1.5.
 - c) The statutory and regulatory scheme of assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the Department of Local Government Finance (DLGF) to use distinctive factors such as soil productivity that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 GUIDELINES, CH. 2 at 77-78; *see also* Ind. Code § 6-1.1-4-4.5(e) (directing the DLGF to use a six-year, instead of a four-year, rolling average

and to eliminate from the calculation the year for which the highest market value-in-use is determined). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.

- d) Indiana Code § 6-1.1-4-13(a) provides that “land shall be assessed as agricultural land only when it is devoted to agricultural use.” “Agricultural property” is defined as land “devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, GLOSSARY at 1. The word “devote” means “to attach the attention or center the activities of (oneself) wholly or chiefly on a specified object, field, or objective.” WEBSTER’S THIRD NEW INTERNATIONAL UNABRIDGED DICTIONARY at 620.
- e) “Residential property” is defined as “vacant or improved land devoted to, or available for use primarily as, a place to live,” and is “normally construed to mean a structure where less than three families reside in a single structure.” GUIDELINES, GLOSSARY at 18. Additionally, the Tax Court has defined “residential excess” as land “dedicated to a nonagricultural use normally associated with the homesite.” *Stout v. Orange Co. Ass’r*, 996 N.E.2d 871, 875 n.6 (Ind. Tax Ct. 2013).
- f) In contrast, land purchased and used for agricultural purposes includes cropland or pasture land (i.e. tillable land) as well as woodlands. 2011 GUIDELINES, CH. 2 at 80. Additional categories of agricultural property include Type 4 “idle cropland” and Type 5 non-tillable land. *Id.* at 103, 104.
- g) Here, the Respondent has the burden of proof and it is important to understand exactly what that burden is. “Under this section, the county assessor or township assessor making the assessment has the burden of *proving that the assessment is correct* in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b) (emphasis added). Additionally, when the assessor changes the land classification, “the county assessor or township assessor making the *change in the classification* has the burden of proving that the change in the classification is correct in any review or appeal.” Ind. Code § 6-1.1-15-17.1(2) (emphasis added). In other words, the Respondent must prove the \$171,300 assessment is correct. The Respondent’s burden here is to prove that the *value* she assigned to the subject property is correct. Just as it is not enough for a Petitioner to simply challenge the methodology used to compute the assessment, it is not enough for a Respondent to rely on methodology to defend an assessment. *See Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006). Instead, the Respondent was required to rely on market-based evidence to prove that the assessed value reflects the property’s market value-in-use, which she failed to do.
- h) The Respondent argued the property was inspected and ultimately she was unable to find any evidence the property was actively farmed. Further, she argued there is no evidence of a timber plan or any other DNR classified program.

- i) The Board cannot find any support for the proposition that an agricultural classification depends solely on whether the property is “actively farmed” or is under a DNR classified program. The classification depends on whether the property is put to agricultural or residential use. The Respondent did not dispute that a large portion of the property had previously been farmed, and the Petitioners offered probative evidence that a portion of the property was still being farmed under a crop-share lease agreement. The Respondent failed to adequately articulate what characteristics, or use of the property, led to the conclusion that the property should be re-classified as excess residential. Again, because the onus was on the Respondent to prove the correct classification, she failed to do so.
- j) The Respondent went on to argue the current assessment accurately reflects the property’s market value-in-use. However, she failed to offer any market-based evidence to support her contention. Such conclusory statements are insufficient to prove the assessment is correct.
- k) For these reasons, the Respondent did not offer enough probative evidence to prove the 2016 assessment was correct. Therefore, the Petitioners are entitled to have their assessment returned to its 2015 value of \$124,700. This ends the Board’s inquiry because the Petitioners only requested the assessment be reduced to its 2015 level.⁴

Conclusion

19. The Respondent had the burden of proving the 2016 assessment was correct. She failed to make a prima facie case, thus the assessment must be reduced to the previous year’s amount.

⁴ The Board notes that, while the Petitioners only requested the total assessment be reduced to the 2015 level, they also argued their sheds should not be assessed as real estate. The Petitioners are incorrect. Historically, common law has always provided that structures such as sheds constitute real property. This has been recognized by a long list of Indiana cases holding the same. *Merrell v. Garver*, 54 Ind. App. 514 (Ind. Ct. App. 1913) and *Harrington v. State Bd. of Tax Comm'rs*, 525 N.E.2d 360 (Ind. Tax Ct. 1988). This is also reflected in the Real Property Assessment Guidelines, wherein sheds, whether portable or affixed to a permanent foundation, have been listed under the real property classification. GUIDELINES, Chapter 1 at 11. Ultimately, because the Petitioners only requested their total assessment be reduced to the prior year’s level, this argument is moot.

Final Determination

In accordance with these findings and conclusions, the 2016 assessment must be changed to \$124,700.

ISSUED: June 1, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.